

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI**

JOSE MARIA DECASTRO,	:	CASE NO. 1:22-cv-00204
	:	
Plaintiff,	:	Judge Michael R. Barrett
	:	
v.	:	Magistrate Judge Stephanie K. Bowman
	:	
PAM WAGNER, ET AL.,	:	
	:	
Defendants.	:	

**DEFENDANTS PAM WAGNER, BRAD SPOLJARIC, CHANCE BLANKENSHIP,
EVAN MCNIGHT, ROBERT FOUCH, AND THE CITY OF IRLINGTON, OHIO'S
MOTION TO EXTEND THEIR TIME TO REPLY IN SUPPORT OF THEIR MOTION
FOR JUDGMENT ON THE PLEADINGS**

Now come Defendants Pam Wagner, Brad Spoljaric, Chance Blankenship, Evan Mcnigh, Robert Fouch, and the City of Irlington, Ohio ("Irlington Defendants"), by and through undersigned counsel, and hereby move the Court to extend their current deadline of January 27, 2023 to file their reply in support of their Motion for Judgment on the Pleadings (Doc. 23) in this matter. The Irlington Defendants respectfully request that the Court grant an extension of fourteen (14) days, or until on or before February 10, 2023. The reasons set forth in the accompanying Memorandum. A proposed Order is attached hereto.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

/s/ Nathaniel W. Rose

Jeffrey C. Turner (0063154)

Dawn M. Frick (0069068)

Nathaniel W. Rose (0099458)

8163 Old Yankee Street, Suite C

Dayton, Ohio 45458

(937) 222-2333, (937) 222-1970 (fax)

jturner@sdtlawyers.com
dfrick@sdtlawyers.com
nrose@sdtlawyers.com
*Trial Attorneys for Pam Wagner, Brad
Spoljaric, Chance Blankenship, Evan
McNight, Robert Fouch, and the City of
Ironton, Ohio*

MEMORANDUM

The Ironton Defendants respectfully request that the Court extend their deadline to file their Reply from the current deadline of January 27, 2023 for fourteen (14) days or February 10, 2023. The Ironton Defendants request this extension because Plaintiff has failed to properly serve the Ironton Defendants with the video concerning the incident at issue, otherwise known as Doc. 20-1. Furthermore, the Ironton Defendants have made multiple efforts to both the Plaintiff and Clerk's office to obtain a copy of the video.

As to the Plaintiff, he did not serve the Ironton Defendants with the exhibit containing any video he cites to in both his Amended Complaint and in his Memorandum in Opposition (Docs. 20, 32.) Plaintiff's Amended Complaint contains allegations of First Amendment, Fourth Amendment, and Fourteenth Amendment violations stemming from his arrest by the Ironton Defendants. (See Doc. 20.) The video presumably contains the minutes leading up to the arrest and the arrest itself and thus is at the crux of the allegations contained in Plaintiff's Amended Complaint. As such, the Ironton Defendants cannot fully respond to Plaintiff's references thereto. Defendants would be prejudiced if forced to respond without access to the copy of the video filed with the Court.¹ The Ironton Defendants attempted to obtain the video directly from the Plaintiff on multiple occasions but received no response. Attached hereto as Exhibits A, B, C, and D are true and accurate copies of

¹ The Ironton Defendants are in possession of a video of the incident at issue, however, it does not match the time stamps and actions alleged in Plaintiff's Amended Complaint (Doc. 20) and Response in Opposition to Defendants' Motion for Judgment on the Pleadings (Doc. 32). Thus, we believe the video filed with the Court is not the same as the

the emails and verification of delivery that they were successfully sent to the email address listed in Plaintiff's Amended Complaint. As of the time of this filing the Ironton Defendants have not heard back from Plaintiff regarding the video. The Ironton Defendants also reached out to Plaintiff to determine if he would oppose the herein request for extension, but also did not receive a response from Plaintiff on that issue.

Regarding the Ironton Defendants' efforts made through the Court, counsel for the Ironton Defendants spoke multiple times with Emily H. at the Clerk's office about obtaining a copy of the video. She informed counsel that a significant portion of Magistrate Judge Bowman's case files and records had been moved to storage while Magistrate Judge Bowman's chambers are being renovated. Furthermore, access to this area is limited. Subsequently, we spoke with Magistrate Judge Bowman's court room deputy, Kevin Moser, who was able to retrieve the flash drive at issue. However, the video file is too large to be sent via email. Thus, the Ironton Defendants would need to travel to the Court to view and/or otherwise make a copy of the flash drive. As such, the Ironton Defendants are in the process of arranging a date and time with Kevin Moser to make that copy. However, because of this will need additional time to respond to Plaintiff's Memorandum.

This is Ironton Defendants' first request for an extension, and they do not seek this extension for undue delay or prejudice to any party. Therefore, the Ironton Defendants respectfully request that the Court grant them an extension of fourteen (14) days, or until on or before February 10, 2023, to attain the video at issue and fully reply to Plaintiff's Memorandum in Opposition (Doc. 32).

video the Ironton Defendants currently possess.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

/s/ Nathaniel W. Rose

Jeffrey C. Turner (0063154)

Dawn M. Frick (0069068)

Nathaniel W. Rose (0099458)

8163 Old Yankee Street, Suite C

Dayton, Ohio 45458

(937) 222-2333, (937) 222-1970 (fax)

jturner@sdtlawyers.com

dfrick@sdtlawyers.com

nrose@sdtlawyers.com

Trial Attorneys for Pam Wagner, Brad

Spoljaric, Chance Blankenship, Evan

McNight, Robert Fouch, and the City of

Ironton, Ohio

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, a copy of which will automatically be forwarded to the parties or their counsel of record and I certify that I have mailed by United States Postal Service First Class mail and by electronic mail, the document to the parties not participating in the electronic filing system:

Jose Maria DeCastro
1258 Franklin Street
Santa Monica, CA 90404
amalaskan@gmail.com

/s/ Nathaniel W. Rose

Nathaniel W. Rose (0099458)